



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Defense Logistics Agency--Reconsideration

File: B-241916.2

Date: May 10, 1991

Thomas M. Hillin, Esq., Defense Logistics Agency, for the agency.
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior decision in which we sustained a protest and recommended termination of the contract and award to protester is affirmed where request does not establish any factual or legal errors in the prior decision which warrant its reversal.

DECISION

The Defense Logistics Agency requests reconsideration of our decision in Retrac, B-241916, Mar. 1, 1991, 91-1 CPD _____. In that decision, we sustained Retrac's protest under request for proposals (RFP) No. DLA740-90-R-0053 issued by the Defense Construction Supply Center for a requirements contract for rearview mirror assemblies. We concluded that the contracting officer, in making his best value determination, had no reasonable justification for award to an offeror on the Quality Vendor List (QVL) at a price higher than the price offered by Retrac, the low, nonlisted offeror.

We affirm our initial decision.

The solicitation, issued June 6, 1990, included a clause entitled "Quality Vendor Program (QVP) (Competition for Performance)" which provided that the agency would pay up to a 20-percent price premium for contractors which have demonstrated dependable quality and delivery performance and are listed on the QVL for a particular federal supply class. Retrac's application for inclusion on the QVL was denied because the agency determined that Retrac failed to deliver, in accordance with the QVP clause, at least 95 percent of all identified Department of Defense (DOD) contract awards within the previous 12 months without valid quality complaints.

In reviewing Retrac's previous 12-month DOD procurement history, seven awards were identified by the agency. One award made by the Defense Industrial Supply Center had a quality complaint for shipping without source inspection as required by the contract. This gave Retrac a 14 percent quality deficiency rate which precluded it from qualifying for the QVL. Since Lo-Mar Corporation was listed on the QVL and its average unit price was less than 20 percent higher (11.3 percent) than Retrac's lower price, the agency awarded a contract to Lo-Mar.^{1/} Award was made on October 22, 1990.

Retrac protested the award to Lo-Mar and argued that it should have received the award because it submitted the lowest price, it was the original equipment manufacturer (OEM) currently producing the item, and the alleged quality defect was merely a "paperwork problem" on a very small order.

We sustained the protest because we found that the record did not justify the award to Lo-Mar at such a higher price. In making a decision to award to an offeror on the QVL at a price higher than the price offered by the low, nonlisted offeror, the solicitation required the contracting officer to determine that the additional expenditure would result in the government receiving the best value because of the enhanced level of probable quality and timely delivery by that offeror. The record showed that there were seven contracts awarded to Retrac for the period subject to the quality performance evaluation. The total amount of the contracts awarded to Retrac was approximately \$11,246. The contract for which Retrac received a quality deficiency report was a small purchase order for only \$112. In its comments to the agency report, Retrac stated that the deficiency resulted from the fact that it had submitted a quotation on the basis of inspection at destination, while the purchase order was awarded by the agency on the basis of inspection at origin. Retrac reported that the problem arose when it delivered the item for inspection at destination as it had bid. A contract modification was subsequently issued to provide for inspection at destination.

The QVP program as implemented by the solicitation clause allowed the contracting officer to consider past performance in making a best value analysis. The solicitation specifically provided that offerors not listed on the QVL were eligible to participate in the procurement. Consequently, we concluded that whether or not a firm qualifies for the QVL,

^{1/} Retrac was low with an average unit price of \$24.81 (total of approximately \$269,000 with options), while Lo-Mar offered an average unit price of \$27.62 (total of approximately \$300,000).

its offer must be given the proper consideration with respect to the best value determination. Here, Retrac's offer was substantially lower than the awardee's. Retrac was the OEM for the part being procured and was producing the part under another ongoing contract. We found it unreasonable for the agency to pay more than an 11 percent premium for an item (an additional \$31,000) simply because of a minor paperwork problem on a \$112 small purchase order. In our view, such a determination, without proper consideration of the nature of the alleged discrepancy in past performance, made the decision unreasonable and arbitrary.

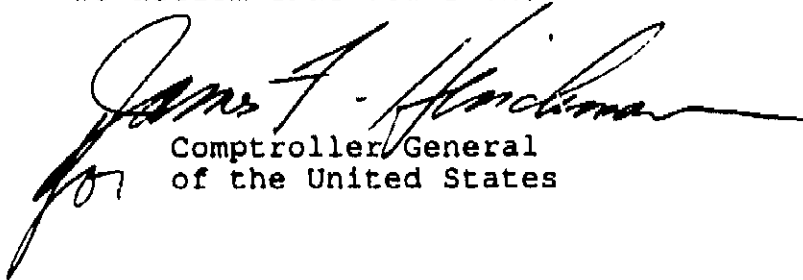
With its request for reconsideration, the agency submitted a memorandum, signed by the contracting officer and dated after our prior decision, in which he relates the factors he used to invoke the program under the RFP, including early delivery. Our decision was not based on the contracting officer's decision that the QVP program should apply to this RFP, and we take no issue with that determination. Rather, we found the best value determination made under the program unreasonable.

The agency argues that our Office misunderstood the facts surrounding Retrac's exclusion from the QVL. Although the protester's comments on the agency report were filed timely with our Office, DLA reports it only received a copy of those comments after our decision was issued. As a result, we only had the protester's account of its deficiency. The agency states that Retrac submitted, under the purchase order in question, a quotation based on inspection at origin. The purchase order was issued on that basis, but Retrac nevertheless shipped without source inspection. The agency contends that Retrac's failure to comply with the terms of the purchase order was not merely a "minor paperwork problem" because the government must expend resources in attempting to solve such problems. The contracting officer argues that when contractors fail to comply with purchase orders, the agency is delayed in using the items and administrative expenses are incurred, however small the purchase might be. The agency believes that "overlooking" Retrac's deficiency for a \$112 purchase order will encourage contractors not to be concerned with their performance on small contracts.

As stated previously, in making a decision to award to an offeror on the QVL at a price higher than the price offered by the low, nonlisted offeror, the RFP explicitly provided that the contracting officer must determine that the additional cost will result in the government receiving the best value because of the enhanced level of probable quality and timely delivery. With regard to Retrac, the contracting officer's 2-1/2 page source selection memorandum only stated that "Retrac had applied for QVP status, but was rejected due to poor quality performance." The awardee was thereafter

described as the "low responsible offeror." While DLA, in its reconsideration, disagrees with our conclusion, we think that the contracting officer could not have reasonably determined that Lo-Mar's offer represented the best value for DLA on the facts as presented to us.

Since we find no error of law or fact in our initial decision, we affirm that decision.

A handwritten signature in cursive script, appearing to read "James F. Hendon". The signature is written in dark ink and is positioned above the printed title.

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